IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

W.P. Nos. 20563, 20583, 20996 and 21015 of 2004

WRIT PETITION NO : 20563 of 2004

Between:

1 Y.Ram Babu, s/o Y.Verreyya,
r/o LIG-150, Lawsens Bay Colony, Visakhapatnam-17.
2 K.Venkateshwar Rao, s/o K.Laxman Rao,
r/o MIG-I, Plot No.44/3, M.V.P.Colony, r/o Visakhapatnam-17.

.....PETITIONERS

AND

1 Visakhapatnam Port Trust, rep., by its Chairman, Port Area, Visakhapatnam.
2 The Visakhapatnam Dock Labour Board, Education Society, Kailashpuram, Visakhapatnam,rep., by its President
3 Visakhapatnam Dock Labour Board, rep., by its Deputy Chairman, Port Area, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or orders, direction or directions declaring the action of the respondents herein in not extending the pay scale as applicable to the Junior Lecturers to the petitioners from the date of their initial appointment as illegal, arbitrary and unreasonable and to issue a

consequential direction to the respondents to continue the petitioners as Junior Lecturers in the Junior College run by the 2nd respondent by extending the pay scale with arrears with all other benefits.

Counsel for the Petitioners: MR.V.SRINIVAS

Counsel for the Respondents : MR.P.SRI RAGHU RAM

WRIT PETITION NO : 20583 of 2004

Between:

M. Srinivas Rao, S/o Appa Rao,
R/o D.No. 2-36, Kotanarava Village, Gopalapatnam, Visakhapatnam-27.

..... PETITIONER

AND

1 Visakhapatnam Port Trust, Rep. by its Chairman, Port Area, Visakhapatnam.
2 The Visakhapatnam Doct Labour Board, Education Society, Kailashpuram, Visakhapatnam,
Rep. by its President.
3 Visakhapatnam Doct Labour Board, Rep. by its Deputy Chairman, Port Area, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or Orders, Direction declaring the action of the Respondents herein in not extending the pay scale as applicable to the Clerk-cum-typist-cum-Cashier to the Petitioner from the date of his initial appointment as illegal, arbitrary and unreasonable and to issue a consequential direction to the Respondents to continue the Petitioner as Clerk-cum-typist-cum-cashier in the Junior College run by the 2nd Respondent by extending the pay scale with arrears with all other benefits.

Counsel for the Petitioner:MR.V.SRINIVAS

Counsel for the Respondents : MR.P.SRI RAGHU RAM

WRIT PETITION NO : 20996 of 2004

Between:

1 S. Chandra Mohan Rao, S/o. V.N. Murthy,
R/o. Yamaha Showroom Backside, Pudimadaka Road, Anakapalli, Visakhapatnam.
2 M. Ramachandra Rao, S/o. M. Adinarayana,
R/o. H.No. 64, 2nd Floor, SBI Colony, MVP Colony, Visakhapatnam.
3 S. Suvarna Laxmi, W/o. M.N. Prasad,
R/o. CBI Down, Visakhapatnam.
4 O. Amen Esther, W/o. Satyanandam,
R/o. Near Latha Hospitals, Visakhapatnam.
5 D. Laxmana Rao, S/o. Gurunath,
R/o. D.No. 30-1-34, Bheemnagar, South Jail Road, Visakhapatnam - 20.

..... PETITIONERS

AND

1 Visakhapatnam Port Trust, Rep by its Chairman, Port Area, Visakhapatnam.
2 The Visakhapatnam Dock Labour Board Education Society, Kailashpuram, Visakhapatnam, Rep by its President
3 Visakhapatnam Dock Labour Borad, Rep by its Deputy Chairman, Port Area, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction or Directions declaring the action of the Respondents herein in not extending the pay scale as applicable to the Employees of the Government Junior Colleges to the petitioners from the date of their initial appointment as illegal, arbitrary and unreasonable and to issue a consequential direction to the Respondents to continue the petitioner as Employees in the Junior College run by the 2nd Respondent by extending the pay scale with arrears with all other benefits.

Counsel for the Petitioners: MR.V.SRINIVAS

Counsel for the Respondents : MR.P.SRI RAGHU RAM

WRIT PETITION NO : 21015 of 2004

Between:

K.V. Saraswathi, W/o. Late K.V.S.K. Shastry,
R/o. SBI Colony, Qtr. No. 16, Peda Waltair,
Visakhapatnam District.

..... PETITIONER

AND

1 Visakhapatnam Port Trust, Rep by its Chairman, Port Area, Visakhapatnam.
2 The Visakhapatnam Dock Labour Board Education Society, Kailashpuram, Visakhapatna, Rep by its President.
3 Visakhapatnam Dock Labour Board, Rep by its Deputy Chairman, Port Area, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Orders, Direction of Directions declaring the action of the respondents herein in not extending the pay scale as applicable to the Record Assistant to the petitioner from the date of her initial appointment as illegal, arbitrary and unreasonable and to issue a consequential direction to the Respondents to continue the petitioner as Record Assistant in the Junior College run by the 2nd Respondent by extending the pay scale with arrears with all other benefits.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents : MR.P.SRI RAGHU RAM

The Court at the admission stage made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 20563, 20583, 20996 and 21015 of 2004

COMMON ORDER:

Since a common question is involved in all these writ petitions, they are being disposed of by this common order.

All these writ petitions are filed for issuance of a writ of Mandamus declaring the action of the respondents herein in not extending the pay-scales as applicable to the employees of the Government Junior College to the petitioners from the date of their initial appointment as illegal and arbitrary and consequently to direct the respondents to continue the petitioners as employees in the Junior College run by the 2nd respondent by extending the pay-

scales with arrears.

The petitioners in both W.P. Nos. 20563 and 20996 of 2004 are working as Junior Lecturers. The petitioner in W.P. 20583 of 2004 is working as Clerk-cum-Typist-cum-Cashier whereas the writ petitioner in W.P. 21015 of 2004 is working as Record Assistant.

The brief averments that are necessary for the disposal of the writ petitions may be stated as follows:

Respondents 1 and 3 are the statutory bodies whereas the 2nd respondent is a Society registered under the Societies Registration Act and it is controlled by respondents 1 and 3. The Deputy Chairman of Visakhapatnam Dock Labour Board is the President of the 2nd respondent-society. The Chairman of the 1st respondent happens to be the Chairman of the Visakhapatnam Dock Labour Board. The 2nd respondent was established by the 3rd respondent and it started a Junior College in the year 1987 at Kailashpuram. The 2nd respondent-society as well as the Jr. College are totally controlled by the Visakhapatnam Dock Labour Board. As per the bye-laws of the 2nd respondent-society, the pay-scales of the employees working in the school and colleges will be the same as being paid by the State Government. Another Society by name Visakhapatnam Port Trust Educational Society, functioning under the 1st respondent, has also started a Junior College at Malkapuram in the year 1994 in addition to the three schools run by it. Even according to the bye-laws of this society, the pay-scales of its employees would be on par with the pay-scales in the Government Educational Institutions. It is the case of the petitioners that their appointments were effected in pursuance of a duly constituted selection process. The Visakhapatnam Dock Labour Board is going to be merged with the Visakhapatnam Port Trust and necessary formalities are undergoing. It was felt by the 1st respondent in the year 2002 that the Junior College being run by the Visakhapatnam Port Trust Educational Society is to be merged with the Junior

College run by the 2nd respondent herein and after series of negotiations with both the Societies, the same was finalized. It was also decided that the teaching as well as the non-teaching employees working in the V.P.T. Educational Society should be transferred to the V.D.L.B. Educational Society by protecting their seniority and also extending the appropriate pay-scales as existing in the later society. Accordingly proceedings dated 31.5.2003 of the Visakhapatnam Port Trust Educational Society were issued informing the petitioners relieving them from duty and directing them to report to duty in the Visakhapatnam Dock Labour Board Junior College. Accordingly the petitioners have reported to duty in Visakhapatnam Dock Labour Board Junior College from 2.6.2003 as employees, but the 2nd respondent did not extend the appropriate pay-scales to them and still continued them on consolidated salaries only. The probation of all the petitioners has been declared. The petitioners are being continued in the Junior College of the 2nd respondent on consolidated salary without being extended the benefits of regular pay-scales to them and they are deprived of other benefits being enjoyed by the regularly appointed employees of the 2nd respondent. Therefore, the contention of the petitioners is that there cannot be any discrimination between the petitioners and other employees of the 2nd respondent-society since the petitioners are recruited through a regular selection process in another society and ultimately became the employees of the 2nd respondent herein, by virtue of merger; therefore, they are entitled to be paid the pay-scales as prevailing in the 2nd respondent-society. The Visakhapatnam Port Trust Educational Society as well as the 2nd respondent are the wings of 1st and 3rd respondents and they do not have independent existence but for the status granted to them by respondents 1 and 3. For all the practical purposes the Chairman of the 1st respondent controls all the educational institutions run by the 2nd respondent and also by the V.P.T. Educational Society. Hence the writ petitions.

Counter affidavits have been filed on behalf of all the respondents admitting that the respondents 1 and 3 are the statutory bodies and that the 2nd respondent-Educational Society was registered under the Societies Registration Act. It is also stated that the society is controlled by the President of the Educational Society and the Secretary and Correspondent. The Secretary and Correspondent of the Society shall have overall control on the affairs of the Society/institutions managed by it. It is also admitted that the Chairman of the Visakhapatnam Port Trust is also the Chairman of the Visakhapatnam Dock Labour Board. It is admitted that the Dock Labour Board Junior College was started in the year 1987. It is also admitted that the Visakhapatnam Port Trust Junior College staff were appointed by Visakhapatnam Port Educational Society. But, it is denied that as per the bye-laws of the society the pay-scales of the employees working in the school and college will be the same as being paid to the State Government institutions. As per bye-law No.17, the teaching and non-teaching staff of the Society shall not be eligible for the benefits enjoyed by the employees of Dock Labour Board as they are not Dock Labour Board Employees. It is admitted that the Visakhapatnam Port Educational Society started the Junior College in the year 1994. All the petitioners have been appointed on consolidated pay and in the appointment orders it is mentioned that their appointment is purely temporary and will be terminated on one month's notice on either side. It is admitted that as per the directions of the Ministry of Shipping, Government of India, discussions are going on to merge the Visakhapatnam Dock Labour Board with Visakhapatnam Port Trust. In the process of merger, it was decided to wind up some of the educational institutions. In this connection, management has taken a decision to shift the Visakhapatnam Port Trust Junior College at Malkapuram and merge the same with Visakhapatnam Dock Labour Board Junior College at Kailasapuram. After bringing the teaching and non-teaching staff of Visakhapatnam Port Trust Junior College into Visakhapatnam Dock Labour Board

Junior College, it was found that some of the teaching and non-teaching staff of V.P.T. & V.D.L.B. Junior Colleges are surplus including the petitioners. There are 40 teaching and non-teaching staff in Visakhapatnam Port Trust and Visakhapatnam Dock Labour Board Junior Colleges and yearly approximately 90 to 100 students are taking admissions. The surplus staff of teaching and non-teaching have been entrusted to look after specific works in different areas of Visakhapatnam Port Trust and Visakhapatnam Dock Labour Board. It was felt that running of Visakhapatnam Port Trust Jr College was not viable and feasible due to demolition of quarters of Visakhapatnam Port Trust in the Malkapuram area where the Visakhapatnam Port Trust Junior College was located. Apart from that for the last 3 years only 10 to 15 children of employees/workers of DLB and Visakhapatnam Port Trust took admission in the Visakhapatnam Port Trust Junior College. In the counter the particulars of the strength of DLB Jr. College for the academic years 2002-03, 2003-04 and 2004-05 are given. It is further stated in the counter that it is not true that a decision has been taken by the management to protect the seniority of the petitioners and to extend appropriate pay scales as mentioned in the proceedings dated 31.5.2003. The teaching and non-teaching staff of Visakhapatnam Port Trust Junior College were temporarily brought into Visakhapatnam Dock Labour Board Junior College from June, 2003. Even thereafter, separate registers and accounts are being maintained for Visakhapatnam Port Trust Junior College. It is not true that the petitioners were selected totally by following the selection procedure. The appointments of the petitioners have not been ratified by the Board of Intermediate Education. The respondents have given the details of expenditure for the College. Hence, they pray that the writ petitions are liable to be dismissed as devoid of merit.

Learned counsel for the petitioners contended that the Visakhapatnam Port Trust Junior College has been merged with the Visakhapatnam Dock Labour Board Junior College and that the pay-scales of the employees of Visakhapatnam Dock Labour Board

Junior College are higher than that of the consolidated salaries of the writ petitioners who are the employees of Visakhapatnam Port Trust Junior College and in respect of the same institution there cannot be two sets of pay-scales because of common categories of posts and that in pursuance of the merger the writ petitioners were relieved and absorbed into the Visakhapatnam Dock Labour Board and, therefore, he prays to allow the writ petitions.

On the other hand, the learned standing counsel for the respondents contended that the employment of the writ petitioners has been protected on humanitarian grounds but not their pay-scales; that the right of the writ petitioners is not an automatic one; that so far no decision has been taken by the respondents and therefore the petitioners have no right to ask for payment of salaries on par with the employees of Visakhapatnam Dock Labour Board and the issue as to whether the petitioners are entitled for the pay-scales on par with the employees of Visakhapatnam Dock Labour Board is under process and therefore no right as such is created to the petitioners to claim the pay-scales on par with the employees of Visakhapatnam Dock Labour Board; that at the time of merger no agreement was entered into between the parties so as to claim the pay-scales on par with the employees of Visakhapatnam Dock Labour Board and that there is no discrimination shown to the petitioners. Hence, the writ petitions are devoid of merit and they are liable to be dismissed.

It is not in dispute that the management of Visakhapatnam Port Trust has decided to merge Visakhapatnam Dock Labour Board Junior College, Kailasapuram and Visakhapatnam Port Trust Junior College, Malkapuram. All the petitioners are employees of Visakhapatnam Port Trust Junior College. All the petitioners have completed two years of probation period. Therefore, by its proceedings dated 2.8.1999 Visakhapatnam Port Trust Junior College declared the probation of the petitioners. A committee was constituted by the Visakhapatnam Port Trust to study the feasibility of merging of both Visakhapatnam Dock Labour Board Junior College

and Visakhapatnam Port Trust Junior College. The committee has thoroughly discussed the merits and demerits of merger of Visakhapatnam Dock Labour Board Junior College and Visakhapatnam Port Trust Junior College and recommended *inter alia* to merge the Visakhapatnam Port Trust Junior College with Visakhapatnam Dock Labour Board Junior College at Kailasapuram. The committee noticed that the employees at Visakhapatnam Dock Labour Board Junior College are being paid with pre-revised pay-scales of aided Junior Colleges whereas the employees of Visakhapatnam Port Trust are being paid with consolidated amount. The committee held that matter of extending the scales paid to V.D.L.B. Junior College employees to V.P.T. Junior College employees would be examined at the time of actual merger of Junior Colleges. On 19.5.2003 a special meeting of Visakhapatnam Dock Labour Board Educational Society was convened. In that meeting some of the members requested the President that while considering the merger of Visakhapatnam Port Trust Junior College with the Visakhapatnam Dock Labour Board Junior College, the interests of V.D.L.B. Junior College staff have to be protected. A resolution was passed on 23.5.2003 in Resolution No. 1/2003-04 to accept the request of the President, V.P.T. Educational Society to transfer and merge V.P.T. Junior College with V.D.L.B Junior College. Accordingly the Visakhapatnam Port Trust Educational Society relieved all the petitioners from their duties on the afternoon of 31.5.2003 to enable them to report to duty to the Principal, Visakhapatnam Dock Labour Board Junior College, Kailasapuram. In the meeting held on 26.3.2003 at 3 p.m., by the Visakhapatnam Dock Labour Board Educational Society with regard to the consideration of request of the college staff association regarding payment of D.A., all the members opined that it is desirable to continue DA to Visakhapatnam Dock Labour Board college staff until the merger. Though the decision has been taken with regard to the extending of pay-scales paid to Visakhapatnam Dock Labour Board Junior College employees to Visakhapatnam Port Trust employees, at the time of merger no decision has been taken. After merger, all the petitioners are the

employees of Visakhapatnam Dock Labour Board Junior College. Once the employees of Visakhapatnam Port Trust Junior College are merged into the Visakhapatnam Dock Labour Board Junior College, in my considered opinion, the petitioners are entitled to the benefits such as pay-scales on par with the employees of Visakhapatnam Dock Labour Board on the principle of equal pay for equal work, which applies between the same group of employees claiming identical pay-scales and the other group of employees who have already earned such pay-scales.

According to the learned counsel for the respondents, the employees of Visakhapatnam Port Trust Junior College are separate class by itself and therefore they are not entitled for the same pay-scales on par with the employees of Visakhapatnam Dock Labour Board. Though they are separate class prior to merger, but after merger of one college into another, the employees of former college form into a single class of the later college. After merger, they cannot be termed as distinct and separate class because in none of the proceedings or resolutions it is discernible that the employees of Visakhapatnam Port Trust Junior College are separate class by itself even after merger. Though the resolution was passed for transferring teaching and non-teaching staff of Visakhapatnam Port Trust Junior College to Visakhapatnam Dock Labour Board Junior College, no decision has been taken with regard to the entitlement of pay-scales of the petitioners on par with the employees of Visakhapatnam Dock Labour Board. When once the transfer of teaching and non-teaching staff of Visakhapatnam Port Trust Junior College to Visakhapatnam Dock Labour Board Junior College is accepted, for all practical purposes the petitioners became the employees of Visakhapatnam Dock Labour Board according to the resolutions. If that is so, there cannot be two sets of pay-scales in respect of each post. Whatever the pay-scales that are applicable to the employees of Visakhapatnam Dock Labour Board, the same pay-scales would also be applicable to the present petitioners, on the principle of equal pay for equal work.

The contention of the learned counsel for the respondents that on humanitarian grounds without affecting their employment the petitioners are entrusted to look after the specific works temporarily at various places of Visakhapatnam Port Trust and Visakhapatnam Dock Labour Board cannot be accepted in the absence of anything contrary to the resolution passed by the authorities. It is nowhere stated in the resolution that the writ petitioners have to be absorbed in Visakhapatnam Dock Labour Board Junior College on humanitarian grounds or that if the teaching and non-teaching staff of Visakhapatnam Port Trust are merged, the staff pattern in the Visakhapatnam Dock Labour Board Junior College would be surplus. Therefore the contentions in the counter affidavit, which are taken for the first time with regard to these aspects, cannot be countenanced. So also the allegation that the expenditure on the college is far more below the income receiving from the college cannot also be taken into consideration at this stage because it is for the respondents to take appropriate decision to extend the pay-scales to the writ petitioners also on par with the employees of Visakhapatnam Dock Labour Board. The petitioners made a representation dated 9.9.2003 with a request for implementation of pay-scales and other benefits on par with the employees of Visakhapatnam Dock Labour Board Junior College. No action was taken on the said representation. Therefore, the respondents have to take appropriate decision considering the nature of work of the petitioners when compared to the work of the employees of Visakhapatnam Dock Labour Board Junior College.

Therefore, the writ petitions are disposed of directing the

respondents to consider the case of the petitioners for extending the pay-scales as applicable to the employees of Visakhapatnam Dock Labour Board within a period of four months from the date of receipt of a copy of this order. No order as to costs.

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K.C. Bhanu, J.

Date: 20--12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman, Visakhapatnam Port Trust, Port Area, Visakhapatnam.
2 The President, The Visakhapatnam Dock Labour Board Education Society, Kailashpuram, Visakhapatnam.
3 The Deputy Chairman, Visakhapatnam Dock Labour Board, Port Area, Visakhapatnam.

4. Two CD copies.